

**ADDRESSING ENVIRONMENTAL JUSTICE**  
in Environmental Assessments/Environmental Impact Statements

**FEDERAL HIGHWAY ADMINISTRATION**  
Western Resource Center - San Francisco

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Executive Order 12898, Federal Actions to Address Environmental Justice (EJ) in Minority and Low-Income Populations, was signed by the President on February 11, 1994. The Executive Order (EO) and accompanying memorandum focuses Federal attention on the environmental and human health conditions in minority and low-income communities, enhances the provision of nondiscrimination in Federal programs affecting human health and the environment, and promotes meaningful opportunities to the access of public information and participation in matters relating to minority and low-income communities and their environment.

The EO is directed internally to all Federal departments and federal agency heads to take the appropriate steps to identify and address any disproportionately high and adverse human health or environmental effects of Federal programs, policies, and activities on minority and low-income populations. For non-federal aid projects, there is no requirement to comply with this EO. The Department of Transportation (DOT) and the FHWA have initiated steps to ensure compliance with the EO:

- \$ DOT's Final EJ Strategy was published in the June 29, 1995 Federal Register, Vol. 60 No. 125.
- \$ DOT's EJ Order was published in the April 15, 1997 Federal Register, Vol. 62, No. 72
- \$ FHWA's EJ Order 6640.23, was signed by the Administrator on December 2, 1998.

This guidance is intended as an interim measure for addressing EJ in the NEPA document until formal agency guidance is issued. Title VI of the Civil Rights Act of 1964, requires that no person, because of race, color, and national origin be excluded from participation in, denied the benefits of, or be subjected to discrimination by and Federal-aid activity. The FHWA Technical Advisory 6640.8A (TA) provides guidance for documenting the potential social, economic, and environmental impacts considered in the selection and implementation of highway projects. EO 12898 is a renewed focus on the Title VI law with respect to minority population and adds low income populations as an emphasis area when addressing socio-economic concerns.

The following supplements the TA for compliance with the principles of EJ. Explicit consideration is required and normally will be found under the social and economic discussion sections. The following "italicized bold" sections are boiler plate wording to incorporate into the environmental document as appropriate.

**IDENTIFYING EXISTING POPULATIONS**

Minority: Black, Hispanic, Asian American, American Indian/Alaskan Native, and Pacific Islander

Low-income: DOT and FHWA use the Department of Health and Human Services (DHHS) poverty guidelines. In 2000, this is \$17,050 for a family of four. This is updated annually at <http://aspe.hhs.gov/poverty/poverty.htm>.

Using localized census tract data and other information, identify any readily identifiable groups or clusters of minority or low-income persons in the project study area. Small clusters or dispersed populations should not be overlooked.

1) In the affected environment section, under the social and economic chapter, provide demographic information on the general population in the project study area. Social characteristics should include identification of the ethnicity, age, mobility and income level of the population. The EO needs to be defined and the following words may be used:

***"Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, signed by the President on February 11, 1994, directs Federal agencies to take the appropriate and necessary steps to identify and address disproportionately high and adverse effects of Federal projects on the health or environment of minority and low-income populations to the greatest extent practicable and permitted by law."***

2) When there are no groups of minority or low-income populations or communities in the project study area, or it has been determined that there will be no impact on these people by the proposed project [based on some referenced analysis], the following statement may be used:

***“No minority or low-income populations have been identified that would be adversely impacted by the proposed project as determined above. Therefore, this project is not subject to the provisions of E.O. 12898.”***

3) When there are groups of minority or low-income populations in the project area which may be beneficially or adversely impacted, proceed to the next section.

#### IDENTIFY COORDINATION, ACCESS TO INFORMATION & PARTICIPATION

Document in the Comments and Coordination Section, the degree to which the affected groups of minority and/or low-income populations have been involved in the decision making process related to the alternative selection, impact analysis and mitigation. Discuss all proactive efforts to ensure meaningful opportunities for public participation including any specific activities to increase outreach for low-income and minority participation. Indicate the opinions of the communities related to these decisions and what steps are being taken to resolve any controversy that exists.

#### IDENTIFYING ADVERSE EFFECTS

- 1) EJ considerations will be summarized under the social-economic Consequences section. References to other topic sections in the NEPA document can be used, as appropriate. The beneficial and adverse impacts on the overall population and on minority and low-income populations or communities, in particular, need to be addressed under the applicable topics such as: air, noise, water pollution, hazardous waste, aesthetic values, community cohesion, economic vitality, employment effects, displacement of persons or businesses, farms, accessibility, traffic congestion, relocation impacts, safety, and construction/temporary impacts, etc.
- 2) Compare the project impacts on the minority and/or low-income populations with respect to the impacts on the overall population within the project area. Fair distribution of the impacts is the goal but rather avoidance first.
- 3) Where there are adverse impacts on any people, discuss what measures are being considered for mitigation using avoidance, first and then minimization and mitigation of the impacts. Using opportunities to enhance and increase sustainability in communities and neighborhoods is desirable. Any activity which demonstrates sensitivity to special needs, should be highlighted.
- 4) If there are groups of minority or low-income populations that will be impacted by the project, the NEPA document should demonstrate whether the impacts are still adverse even after consideration of any mitigation.
- 5) If the impacts remain adverse after mitigation, a determination of whether they are disproportionately high and adverse after considering offsetting benefits is needed and the next section must be followed.

If there are no disproportionately high and adverse effects, the following statement may be used:

***“Based on the above discussion and analysis, the XYZ alternative(s) will not cause disproportionately high and adverse effects on any minority or low-income populations as per E.O. 12898 regarding environmental justice.”***

#### IDENTIFYING DISPROPORTIONATELY HIGH & ADVERSE EFFECTS

A disproportionately high and adverse effect means the impact is appreciably more severe or greater in magnitude on minority or low-income populations than the adverse effect suffered by the non-minority or non-low-income populations after taking offsetting benefits into account.

If this determination is made, the NEPA must document how the impacts of the alternative could not be avoided or minimized, how the impacted communities were involved in the decision process and what practicable mitigation commitments have been made. Furthermore, it must be demonstrated how other alternatives which would have a less adverse effect on minority and/or low-income populations are not practicable because they would either not satisfy the project needs, have more severe adverse impacts, or that the social, economic, environmental or human health impacts of the other alternatives reach costs of extraordinary magnitudes.

There is no new right of legal action or redress under this Executive Order 12898

# ENVIRONMENTAL JUSTICE

## ENVIRONMENTAL DOCUMENTS CHECKLIST

<p>1. Under the Social and Economic Discussion, Is Executive Order 12898, Federal Actions to Address Environmental Justice in Minority and Low-Income Populations, defined? Though Environmental Justice is discussed under the above-mentioned section, does the document make reference to other subject headings as appropriate? (See Note 1 Below)</p>	<p>Yes _____</p> <p>No _____</p>	<p>Comments</p>
<p>2. Does the document give a description of the minority and/or income populations affected by the proposed action? (Include size of population and their pertinent demographic characteristics) This information is needed to do an adequate Environmental Justice (EJ) analysis.</p>	<p>Yes _____</p> <p>No _____</p>	
<p>3. Does the document discuss whether the population is readily identifiable groups or clusters? (If the population is dispersed and not an identifiable minority or low-income community, then the study area population may be homogeneous and can be stated as such. If small minority and/or low-income communities exist within a non-minority/non low-income neighborhood, they should be identified.)</p>	<p>Yes _____</p> <p>No _____</p>	
<p>4. Does the document define low income? (Definition of low income is a population whose median household income is at or below the Department of Health and Human Service poverty guidelines)</p>	<p>Yes _____</p> <p>No _____</p>	
<p>5. Does the document identify and describe affect(s) to minority and/or low-income populations? Indicate other environmental factors that are involved or inter-related (General economics, Community &amp; Residential, Historic Resources, Public Involvement, etc.)</p>	<p>Yes _____</p> <p>No _____</p>	
<p>6. Does the document discuss the project's impact on traveling costs, modes of transportation, accessibility, noise, and visual impacts due to cultural interpretations or affiliations?</p>	<p>Yes _____</p> <p>No _____</p>	
<p>7. Does the document indicate whether effects to minority and/or low-income populations are beneficial, adverse, or disproportionately high and adverse? Need comparison to determine the context and intensity of impacts on the EJ populations as compared to the non-EJ populations. (Describe effects.)</p>	<p>Yes _____</p> <p>No _____</p>	

# ENVIRONMENTAL JUSTICE ENVIRONMENTAL DOCUMENTS CHECKLIST

<p>8. Is it documented in the Comments and Coordination Section, the degree to which affected groups of minority and/or low-income populations have been involved in the decision making process related to the alternatives selection, impact analysis, and mitigation? Does the document identify and describe issues of concern or controversy to the minority and/or low-income populations? Does the document indicate the opinions of the communities related to the decisions made and what steps are being taken to resolve any controversy that exists?</p>	<p>Yes _____ No _____</p>	
<p>9. Is there discussion of all efforts to ensure meaningful opportunities for public participation including any specific activities to increase outreach for low-income and minority participation during the project development process?</p>	<p>Yes _____ No _____</p>	
<p>10. Does the discussion identify and discuss mitigation measures, enhancement efforts, or alternatives that would address the disproportionately high and adverse effects on the low income and/or minority populations?</p>	<p>Yes _____ No _____</p>	

Note 1: The FHWA – California Division recommends using the December 2000 FHWA Western Resource Center Guidance “Addressing Environmental Justice in the Environmental Assessment (EA)/Environmental Impact Statement (EIS)” as in instrument for performing the EJ analysis in environmental documents.

Note 2: When discussing other environmental factors involved or inter-related, the beneficial and adverse effects on the overall population and on minority and/or low-income populations or communities is discussed under the applicable topics which should include: air, noise, and water pollution and soil contamination; destruction or disruption of man-made or natural resources; aesthetic values; community cohesion or a community’s economic vitality; adverse employment effects; displacement of persons, businesses, farms, or nonprofit organizations; etc.